

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1550 of 1989

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

I N S VALSURA CIVILIAN EMPL. UNION

Versus

CHIEF OF NAVAL STAFF

Appearance:

MR MANOJ N POPAT for Petitioner
NOTICE SERVED for Respondent No. 1, 2

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 17/02/2000

ORAL JUDGEMENT

1. This is a petition under Article 227 of the Constitution of India though styled as one under Articles 226 and 227 read with Articles 14, 16, 19 and 21 of the Constitution of India. The petitioner herein is an Employees Union of Civilian Employees of INS Valsura, which is a naval establishment at Jamnagar.

2. The members of the Union in their individual capacity had filed individual applications under section 15 of the Payment of Wages Act, 1936, on the ground that deduction of one day's wages effected by the establishment were unjustified and illegal. The Payment of Wages Authority rejected those applications by judgement and order, both on merits i.e. on facts and also in law. The concerned workmen thereupon preferred individual appeals under section 17 of the said Act which were heard and decided by the Extra Assistant Judge, Jamnagar being Regular Civil Appeal Nos.31/88 to 105/88. The appellate court upheld the findings of the payment of Wages Authority and dismissed the appeals. It is under these circumstances that the Union has preferred the present Special Civil Application.

3. Firstly it is doubtful whether a common writ petition is maintainable at the instance of the Union, where the original proceedings as also the appellate proceedings were not through the Union, but were instituted and pursued by the individual employees. However, I do not propose to pass any order adverse to the petitioner on this ground alone.

4. Before proceeding further on the merits of the matter it is desirable to keep in mind the observations of the Supreme Court in the case of Mohammad Yunus Vs. Mohammad Mustaqim (AIR 1984 SC 38) and Khali Ahmed Bashir Vs. Tufelhussein S. Sarangpurwala (AIR 1988 SC 184), on the question of the scope and ambit of the jurisdiction of this Court in the context of the powers which this Court may exercise under Article 227 of the Constitution. The Supreme Court has observed in the aforesaid two cases that the High Court, while examining a petition under Article 227 of the Constitution of India, cannot reappreciate the evidence and cannot disturb the findings of fact recorded by the courts below except where the same are perverse, and even errors of law cannot be corrected.

5. The short and pertinent facts relevant for the purpose of the present petition are as under:

5.1 The concerned employees were employed at I.N.S. Valsura, which is a training establishment situated at Jamnagar, of the Indian Navy. There is a Union of civilian employees, and such civilian employees are engaged in various posts. The employer introduced a centralised system of tokens for civilian employees of this unit with effect from 11th July 1983, and since the

concerned workmen (118 in all) refused to accept the token from the main gate, they were not permitted to enter the premises and consequently they could not report for duty on that day. For this reason one day's wages were deducted from the salary of each of such workmen. It was this deduction of one day's wages which was the subject matter of the relevant applications before the Payment of Wages Authority.

6 Various contentions were raised by the establishment before the Payment of Wages Authority, which need not be examined here in detail.

7. It is not in dispute that a uniform centralised system of issuing a token for each employee (for civilian employees employed in the unit) was introduced with effect from 11th July 1983 to ensure punctuality in attendance. This system was introduced to cover all industrial employees on the civilian side such as M.T. drivers, Anti-malaria staff, marine staff, etc. It appears that the majority of the civilian employees including the 118 workmen who had filed the applications before the Payment of Wages Authority did not take the tokens from the main gate as a protest against the introduction of the token system. Consequently they could not report for duty within the premises on that day and their wages for the day were, therefore, deducted.

8. Although the trial court found that the employer does not come within the purview of the definition of industrial establishment within the meaning of section 2(ii) of the Payment of Wages Act, it held that it had jurisdiction to entertain the applications under section 15(3) of the said Act, in view of the notification of the Education and Labour Department, Government of Gujarat, dated 31st May 1960. However, each of the application was rejected since it was clearly time barred. There is no dispute that the applications were in fact preferred beyond the prescribed period of limitation (12 months) as per the first proviso to section 15(2) of the said Act. In fact the applications were made more than 16 months from the cause of action.

9. On the facts and circumstances of the case it is not necessary for me to discuss in greater detail the approach of the appellate court, in view of the admitted facts on record.

10. The lower appellate court found on the admitted facts that the deduction of one day's wages could not be said to be unauthorised inasmuch as it was by voluntary

act of the individual workman that they refused to take token from the main gate, as per the administrative directions, and were therefore unable to enter the premises, and were consequently absent from duty on the relevant day.

11. On the question of limitation the lower appellate court found that admittedly the applications were filed more than 16 months after the deduction, and therefore the applications were clearly time-barred. What is more significant is that no application for condonation was made which is permissible vide the second proviso to section 15(2) of the said Act. What is even more important is that there was even the absence of an attempt to file a condonation application at the stage of arguments, or even to make an oral application for condonation.

12. Thus, in the present petition under Article 227 of the Constitution of India, on the question of limitation, this court is unable to disagree with the findings of the two courts below, that not only were the applications beyond limitation, but there is a total absence of any justification for the delay coupled with the absence of any prayer for condonation. So far as the facts of the case are concerned, the lower appellate court has rightly come to the conclusion that the deduction of one day's wages is justified and even for this reason the original applications deserve to be rejected on merits.

13. In the premises aforesaid the judgement and order passed in Regular Civil Appeal Nos.31/88 to 105/88 is required to be upheld. There is, therefore, no substance in the present petition and the same is accordingly dismissed. Rule is discharged with no order as to costs.
